

STATE OF ALASKA

THE REGULATORY COMMISSION OF ALASKA

Before Commissioners:

Robert M. Pickett, Chairman  
Kate Giard  
Paul F. Lisankie  
Anthony A. Price  
Janis W. Wilson

In the Matter of the Tariff Revision Designated  
as TA172-4, Regarding a Proposed Gas Cost  
Adjustment for 2009 Filed by ENSTAR  
NATURAL GAS COMPANY, A DIVISION OF  
SEMCO ENERGY, INC.

U-08-142

ORDER NO. 14

**CONCURRING STATEMENT OF COMMISSIONER KATE GIARD**

I agree that ENSTAR should not be allowed to pass its proposed \$5.7 million through its 2009 gas cost adjustment. The \$5.7 million payments made for the Fort Richardson Laundry error are not gas costs associated with an existing or previously existing gas supply contracts and therefore do not qualify as a gas cost element.

ENSTAR has been hoisted on its own petard by the public over this matter with some justification. Slyly trying to recover all of its \$5.7 million cash outlay from its gas supply customers, yet allowing others to "give gas back" to the pipeline in future years was unwise.

Still, I accept ENSTAR's argument that the oversupply of gas into ENSTAR's pipeline did result in fewer gas purchases from ENSTAR's gas supply contracts to meet customer demand. ENSTAR should be reimbursed to the extent that it can reasonably estimate how much gas was used by gas supply customers. We have always allowed the cost of gas to be directly passed through to customers without a mark-up. The lack of a mark-up means ENSTAR has earned no return on gas

1 purchases and has accumulated no cushion to address gas supply errors. Therefore,  
2 fairness dictates that ENSTAR's retained earnings should not absorb the cost of gas  
3 supply. Those costs should be borne by customers.

4 It is also not in the public interest to require ENSTAR to absorb the  
5 \$5.7 million as a penalty for its failed system of internal controls. Recordkeeping errors  
6 are made all the time. Shutting our eyes to the reality that Cook Inlet producers  
7 unknowingly donated gas supply to ENSTAR's customers may be the popular  
8 consensus, but it does not obviate our obligation for justice.

9 Yet, the time has not come for ENSTAR's gas supply customers to pay  
10 their tab. ENSTAR needs to regroup, prepare the necessary calculations which  
11 reasonably estimate the amount of gas supply used by its customers and propose  
12 realistic alternatives for reimbursement.<sup>1</sup>

13 As ENSTAR noted at hearing, "This case has generated more publicity  
14 and public attention than any other utility matter that I've worked on in the last  
15 25 years."<sup>2</sup> The public attention is not likely to go away. What ENSTAR tried to do in  
16 this case, as I noted before, was unwise and presumptive. But you do not throw the  
17 baby out with the bath water and you do not, in a mature regulatory environment, force  
18 a public utility to absorb costs that should be passed along, in some fashion, to  
19 customers.

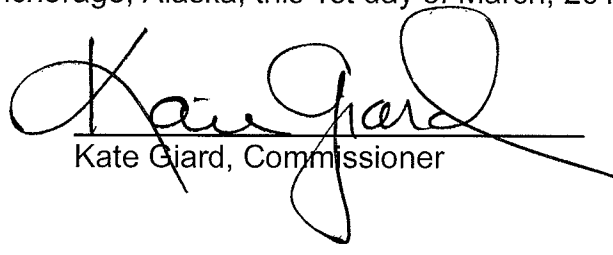
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24 <sup>1</sup> As this gas will never be associated with a gas supply contract, however, it can  
25 never be put through ENSTAR's gas cost adjustment and instead should be captured  
26 as a deferred asset and recovered over a similar period as it was incurred.

<sup>2</sup> Tr 113.

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ENSTAR needs a do-over. Hopefully it can piece together a strong  
evidential record which will support it.

DATED AND EFFECTIVE at Anchorage, Alaska, this 1st day of March, 2010.



Kate Giard, Commissioner